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GENERAL COUNSEL

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Before the State of South Carolina
Department of Insurance

In the matter of:)
)
Benchmark Insurance Company)
)
6701 West 64th Street)
Shawnee Mission, Kansas 66202)
_____)

SCDI File Number 104526

106446 SOUTH CAROLINA
DEPARTMENT OF INSURANCE

Consent Order
Imposing Administrative Penalty

This matter comes before me pursuant to an agreement entered into between the State of South Carolina Department of Insurance and Benchmark Insurance Company, an insurer licensed to transact insurance business within the State of South Carolina.

Benchmark hereby admits, and I find as fact, that it failed to accept an application for small group health insurance by Trado Supplies Inc. and failed to appoint Lary Davis, a licensed South Carolina insurance agent, as an agent for the company after having received Mr. Davis' appointment papers, providing Mr. Davis with a proposal and application materials via the internet and having received an application for group health insurance for Trado Supplies from Mr. Davis. Benchmark has alleged that these violations of South Carolina statutes were completely unintentional. However, these actions are a direct violation of S.C. Code Ann. §§ 38-71-1360(A)(1) and (A)(4) (Supp. 2000), 38-43-20(f) and 38-71-1440(E) and can ultimately lead to the revocation of the insurer's certificate of authority pursuant to S.C. Code Ann. § 38-5-120 (A) (2) (Supp. 2000) to transact the business of insurance within the State of South Carolina, subject to the insurer's right to a public hearing before the Administrative Law Judge Division.

Prior to the initiation of formal administrative disciplinary proceedings by the Department against it, Benchmark and the Department agreed to submit the entire matter to me, along with their specific recommendation, for my summary decision. That consensual recommendation was that, in lieu of the Department's filing of a petition to revoke its certificate of authority to transact business as an insurer within the State of South Carolina, Benchmark would waive its right to a public hearing, immediately submit an administrative penalty in the total amount of \$3,000, offer small group coverage to Trado Supplies Inc. and appoint Lary Davis as an agent for Benchmark for the state of South Carolina. It is understood and agreed that if Trado Supplies Inc. refuses coverage in writing and/or Lary Davis refuses appointment as an agent for Benchmark in writing, that upon Benchmark's providing the Department with a copy of such refusal or refusals Benchmark will only be required to comply with the remaining portions of this order on which written refusals have not been received.

S.C. Code Ann. § 38-71-1360(A)(1) and (A)(4) (Supp. 2000) in pertinent part state the following:



Benchmark Insurance Company

“(A) (1) Every small employer insurer shall, as a condition of transacting business in this State with small employers, actively offer to small employers all health insurance plans actively marketed to small employers in this State....”

“(A)(4) Except as provided in Sections 38-71-1360(C) and (D), a small employer insurer shall issue these health insurance plans to any eligible small employer that applies for any such plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health insurance plan relating to employer contribution rules and group participation rules and not inconsistent with this article.”

S.C. Code Ann. §38-43-20(f) (Supp. 2000) in pertinent part states “[a]n agent qualified to transact a life, health, or group insurance business may present a proposal for life, health, or group insurance to a prospective policyholder on behalf of an insurer for which the agent is not specifically licensed, and may also transmit an application for insurance to that insurer, if the insurer has previously furnished the proposal and application materials to the agent. By furnishing the proposal and application materials to the agent, the insurer is considered to have authorized the agent to act on its behalf, and the insurer is responsible for all the actions of the agent as if the agent had been duly licensed for the insurer. Not more than fourteen days after the agent submits an application for insurance to insurer, the insurer shall forward to the director or his designee its request that the agent be licensed s the insurer’s agent in accordance with the requirements of this chapter.”

S.C. Code Ann. §38-71-1440(E) (Supp. 2000) in pertinent part states “[n]o small employer insurer may terminate, fail to renew, or limit its contract status or agreement of representation with an agent for any reason related to the health status, claims experience, occupation, or geographic location of the small employers placed by the agent with the small employer insurer.”

After a thorough review of the matter, carefully considering the recommendation of the parties, and pursuant to my findings of fact, I hereby conclude as a matter of law that Benchmark did violate S.C. Code Ann. §§ 38-71-1360(A)(1) and (A)(4), 38-43-20(f), and 38-71-1440(E) (Supp. 2000). Although I can now revoke the insurer’s certificate of authority, I hereby impose an administrative penalty in the amount of \$3,000 against Benchmark pursuant to the discretion provided to me by the State of South Carolina General Assembly in S.C. Code Ann. §§ 38-5-130 and 38-2-10 (Supp. 2000) and require certain corrective action as set forth in paragraph three of page one of this order. This administrative penalty must be paid and the required corrective action must be taken within ten days of my date and my signature upon this consent order. If that total amount is not paid on, or before, that date, and/or the required corrective action is not taken by that date, then Benchmark’s certificate of authority to transact business as an insurer within the State of South Carolina will be summarily revoked without any further administrative disciplinary proceedings.



Benchmark Insurance Company

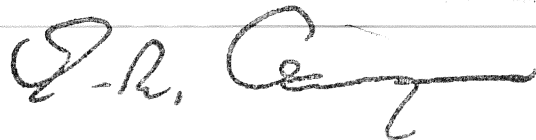
This administrative penalty has been reached by the parties as a result of negotiation and compromise, and in consideration of the internal corrective measures Benchmark has taken to prevent this problem from recurring and of its assurance that it will in the future comply with South Carolina insurance statutes and regulations. By the signature of one of its officers or authorized representatives upon this consent order, Benchmark acknowledges that it understands that this administrative disciplinary order is a public record subject to the disclosure requirements of the State of South Carolina's *Freedom of Information Act*, S.C. Code Ann. §§ 30-4-10, *et seq.* (1991 and Supp. 2000).

Nothing contained within this administrative disciplinary order should be construed to limit, or to deprive any person of, any private right of action under the law. Nothing contained within this administrative disciplinary order should be construed to limit, in any manner, the criminal jurisdiction of any law enforcement or judicial officer. Nothing contained within this administrative disciplinary order should be construed to limit the statutory duty, pursuant to S.C. Code Ann. § 38-3-110 (Supp. 2000), of the Director of Insurance, exercised either directly or through the Department, to "report to the Attorney General or other appropriate law enforcement officials criminal violations of the laws relative to the business of insurance or the provisions of this title which he considers necessary to report."

It is, therefore, ordered that Benchmark Insurance Company shall, within fifteen days of my date and my signature upon this consent order, pay through the Department an administrative penalty in the total amount of \$3,000, offer small group coverage to Trado Supplies Inc. and appoint Lary Davis as an agent for Benchmark for the state of South Carolina. It is understood and agreed that if Trado Supplies Inc. refuses coverage in writing and /or Lary Davis refuses appointment as an agent for Benchmark in writing, that upon Benchmark's providing the Department with a copy of such refusal or refusals, Benchmark will only be required to comply with the remaining portions of this order on which written refusals have not been received.

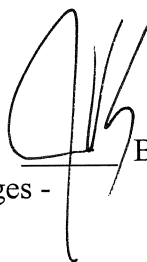
It is further ordered that a copy of this consent order shall be immediately transmitted to the National Association of Insurance Commissioners for distribution to its member states.

This consent order becomes effective on the date of my signature below.



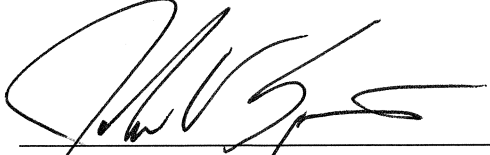
Ernst N. Csiszar
Director

March 27, 2001
Columbia, South Carolina



Benchmark Insurance Company

I CONSENT:



Signature of Authorized Representative

John V. Spain

Name

Director, Affinity Programs & Regulatory Relations

Title

Benchmark Insurance Company

6701 West 64th Street

Shawnee Mission, Kansas 66202

Dated this 21st day of March, 2001